



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 3, 2015

Mr. Michael S. Copeland
Deputy City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2015-25258

Dear Mr. Copeland:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 589753.

The City of Denton (the "city") received a request for specified information pertaining to the city's electric utility system during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You state the city sought clarification for the request for information. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

further state the city has not received a response to portions of the request for clarification. Thus, for the requested information for which the city has sought but has not received clarification, we find the city is not required to release information in response to the portions of the request at issue. However, if the requestor clarifies the portions of the request for information at issue, the city must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. *Open Records Decision No. 561* (1990). In this case, as the city has submitted information responsive to the request and has made arguments against disclosure of this information, we will address the applicability of its arguments to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the Texas Homeland Security Act (the "HSA"). As part of the HSA, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* *Open Records Decision No. 649* at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert, and we agree, the city's electric utility system is critical infrastructure. *See generally id.* § 421.001 (defining "critical infrastructure" to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation"). You state the submitted information relates to the operation and locations of the city's electric utility system. You explain the release of the information at issue could be useful to terrorists in attacking the city's energy infrastructure and could present a risk to the safe and secure provision of electricity. Based on your representations and our review, we find the city has demonstrated the release of the submitted information would identify the technical details of particular vulnerabilities of the city's electric utility system to an act of terrorism. Thus, the city must withhold the

submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 589753

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.